



acts as far as practical. Further that where there is a conflict between two statutes, “*the specific statute relating to a specific subject will prevail over the general statute relating to a broad subject.*” See generally, *Ex parte Jones Mfg. Co.*, 589 So.2d 208, 211 (Ala.1991) and *Weathers v City of Oxford*, 895 So2nd. 305, 310 (Ala. Civ. App 2004).

In the present matter, the two statutes of limitations include the general statute for actions that must be filed within six years, Ala. Code 6-2-34 (1975) and the more specific UCC six year statute of limitations applicable to the secured instrument. Defendant’s response uses the *Williams* case as its basis for argument that the statute of limitation has not expired. However, as stated below, that case was decided under a different statute of limitation code section.

Further, Defendant’s lack of response to the UCC argument is an admission that the law is controlling and proper for consideration by this court in ruling upon Plaintiff’s motion for partial summary Judgment.

**2. *Williams v Williams*, 497 So.2d 481(Ala. 1986) is not controlling and not applicable.**

The *Williams v Williams* case is cited as controlling by Defendant. The *Williams* case arises out of litigation from the probate of an estate. The son of the deceased had power of attorney for his mother and he made loans to himself through the power of attorney. The issue was over the estate’s recovery of these notes. The case details that the notes were not secured or subject to a security agreement that is present in the current case. Also, the *Williams’* case turns on application of the 10 year statute for Notes under Seal. Presumably, the notes were apparently under seal. The case has been cited by other cases on Westlaw, exactly one time on another issue involved in the case regarding the “dead man statute.”

The *Williams* case was decided under Ala. Code Section 6-2-33, which provides a ten year statute of limitations for actions on notes that are "Under Seal." No facts before this court places the secured instrument involved in the purchase of the used automobile as a note or agreement that is under seal. Therefore, the provisions of 6-2-33 are not applicable.

The *Williams* case is easily distinguished from the present facts and is not controlling law for this matter. The present case statute of limitation issue is a determination of the appropriate 6 year statute of limitation to apply to the secured instrument given for the purchase of the used automobile, the subsequent repossession and sale of the vehicle and the acceleration of the note as part of the auto's sale after repossession.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of February 2007, I served by Electronic Transmission, a true and correct copy of the foregoing document to the following parties:

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